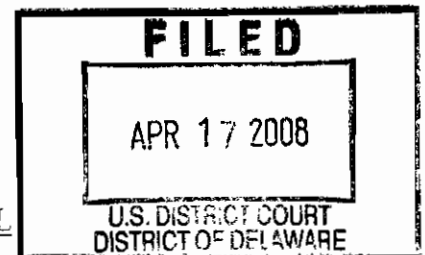


COPY IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Adam WENZKE,)
Plaintiff,)
)
)
)
Cms v. Jim WELCH, DR SMITH, DR TODAG)
DR, DESROSIERS, BETTY BRADLEY, NEHELE)
Butcher, Stephanie Mowbray et al.)
Scott J. Altman)
Defendant.)

Civil Action No. 07-504 SLR



MOTION FOR APPOINTMENT OF COUNSEL

Plaintiff Adam WENZKE pursuant to 28 U.S.C. § 1915,

request this court to appoint counsel to represent petitioner in the above-entitled action for the following reasons:

In deciding whether to appoint counsel for an indigent litigant, the District Court of Delaware articulated standards for evaluating a Motion for Appointment of Counsel filed by a *pro se* plaintiff. See *Green v. FCM*, 430 F. Supp.2d 383, 387 n. 3 (D. Del. 2006) (citing *Tabron v. Grace*, 6 F.3d 147 (3rd Cir. 1993) and *Parhan v. Johnson*, 126 F.3d 454 (3rd Cir. 1997)). Initially, the Court must examine the merits of a plaintiff's claim to determine whether it has some arguable merit in fact and law. See *Parhan*, 126 F.3d at 457 (citing *Tabron*, 6 F.3d 157); accord *Maclin v. Freake*, 65 F.2d 885, 887 (7th Cir. 1981) (per curiam) (cited with approval in *Tabron* and *Parhan*). Only if the Court is satisfied that the claim is factually and legally meritorious, should it then examine the following factors: (1) the plaintiff's ability to present his own case; (2) the complexity of the legal issues presented; (3) the extensiveness of the factual

INVESTIGATION NECESSARY TO EFFECTIVELY LITIGATE THE CASE AND THE PLAINTIFF'S ABILITY TO PURSUE SUCH AN INVESTIGATION; (4) THE DEGREE TO WHICH THE CASE MAY TURN ON CREDIBILITY DETERMINATION; (5) WHETHER THE TESTIMONY OF EXPERT WITNESS WILL BE NECESSARY; AND (6) WHETHER THE PLAINTIFF CAN ATTAIN AND AFFORD COUNSEL ON HIS OWN BEHALF.

IN SUPPORT OF THIS MOTION, THE PLAINTIFF AVERS THE FOLLOWING:

- 1) THE PLAINTIFF DOES NOT HAVE THE ABILITY TO PRESENT HIS OWN CASE.
- 2) THE PLAINTIFF IS UNSKILLED IN THE LAW AND THE COMPLEXITY OF THE LEGAL ISSUES PRESENTED IN THE COMPLAINT IS BEYOND PLAINTIFF'S ABILITIES TO PURSUE AN EFFECTIVE INVESTIGATION.
- 3) THE PLAINTIFF AVERS THAT THE CASE MAY TURN ON CREDIBILITY DETERMINATION.
- 4) THE PLAINTIFF AVERS THAT TESTIMONY OF EXPERT WITNESSES WILL BE NECESSARY.
- 5) THE PLAINTIFF CANNOT ATTAIN AND AFFORD COUNSEL ON HIS OWN BEHALF.
- 6) APPOINTMENT OF COUNSEL WOULD SERVE "THE BEST INTEREST OF JUSTICE" IN THIS CASE.
- 7) THE PLAINTIFF'S ALLEGATIONS IF PROVED, CLEARLY WOULD ESTABLISH A CONSTITUTIONAL VIOLATION BECAUSE C.M.S. AND DEFENDANTS ARE CONTRACTED BY THE STATE OF DELAWARE TO PROVIDE MEDICAL CARE TO STATE PRISONERS LOCATED AT HOWARD R. YOUNG CORRECTIONAL

INSTITUTE AND AT THE DELAWARE CORRECTIONAL CENTER, WHERE PLAINTIFF CURRENTLY RESIDES, AND THEY REFUSE TO TREAT PLAINTIFF'S MEDICAL CONDITION OR EVEN FOLLOW THE MEDICAL SPECIALIST RECOMMENDATION FOR TREATMENT.

WHEREAS SUBJECTING PLAINTIFF TO SEVERE AND SHARP PAINS + MAJOR DISCOMFORT AND MENTAL ANGUISH WHICH VIOLATES HIS 8th AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT.

FOR THE FOREGOING REASONS, THE PLAINTIFF HAS PROVIDED THE COURT WITH SUFFICIENT FOUNDATION FOR THE COURT TO APPOINT COUNSEL IN THIS CASE.

April 15, 2008
[DATE]

Adam Wenghe #182595
[NAME]
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DE
19977

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____ ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
)	
_____ . et al,)	
)	
)	
Defendant.)	

ORDER

IT IS HEREBY ORDERED, THIS _____ DAY OF _____, 200__, THAT THE ATTACHED MOTION FOR APPOINTMENT OF COUNSEL HAS BEEN READ AND CONSIDERED. IT IS ORDERED THAT THE MOTION IS HEREBY _____.

United States District Court Judge

Certificate of Service

I, ADAM WENZKE, hereby certify that I have served a true

And correct cop(ies) of the attached: MOTION FOR APPOINTMENT
OF COUNSEL upon the following

parties/person (s):

TO: CLERK'S OFFICE

TO: _____

U.S. DISTRICT COURT

844 N. KING ST. LOCKBOX 18

Wilm, DE

19801-3570

STATE OF DELAWARE
TO: DEPARTMENT OF JUSTICE

TO: _____

STATE OFFICE Bldg.

MRS. Ophelia M. WATERS D.A.G.

820 N. FRENCH ST.

Wilm, DE 19801-3509

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 15th day of April, 2008

Adam Wenzke

IM ADAM WENZKE
SBI# 182595 .. UNIT #23
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA DELAWARE 19977



OFFICE OF THE CLERK
U.S. DISTRICT COURT
844 N. KING ST. (LOCKBOX 18)
WILMINGTON, DE
19801



LEGAL MAIL